

1 examined. Argument was heard. From the testimony, evidence and
2 contentions of the parties the Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant Seattle Iron and Metals Corporation operates a metals
6 recycling facility on Harbor Island near the mouth of the Duwamish
7 River in Seattle, Washington,

8 The facility includes a furnace in which clean aluminum is sweated
9 from iron and other metals.

10 II

11 Respondent PSAPCA is a municipal corporation with responsibility
12 for a program of air pollution prevention and control in a
13 multi-county area, within which lies the Duwamish estuary and the site
14 of appellant's facility.

15 PSAPCA has filed a certified copy of its Regulation I with this
16 Board and we take notice of its contents.

17 III

18 On the morning of October 29, 1985, a PSAPCA inspector on routine
19 patrol spotted a black plume from appellant's aluminum sweat furnace
20 stack at a distance of about a mile. The inspector proceeded to the
21 plant site and made visual opacity readings at a distance
22 approximately 500 feet southeast of the stack. The view was
23 unobstructed; the sun was situated within a 140 degree sector to the
24 inspector's back. The sky provided a clearly contrasting background
25 to the perpendicular plume. The wind was from the north-northeast at

26 FINAL FINDINGS OF FACT,
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1 one to five miles per hour.

2 In a fifteen minute observation period, PSAPCA's inspector
3 observed that the black plume at its point of highest density reached
4 a 25 to 60 percent plume opacity for seven and three-fourths minutes.
5 The inspector also took photographs of the plume which verify his
6 visual observations.

7 IV

8 Appellant's aluminum sweat furnace is equipped with a
9 thermocoupler valve which controls combustion and contributes to the
10 control of particulate emissions. On the morning of October 29, 1985,
11 this valve malfunctioned with the result that smoke of unusually high
12 density was emitted. The problem was an unanticipated upset
13 condition. The company, however, made no immediate report of the
14 problem to PSAPCA.

15 V

16 The Duwamish area, including the appellant's plant site, is in a
17 non-attainment area for particulate, meaning that the national primary
18 ambient air quality standard for this contaminant is not consistently
19 maintained. The standard is set at a level calculated to protect
20 public health.

21 VI

22 PSAPCA's inspector advised supervisory personnel at Seattle Iron
23 and Metals of the results of his opacity readings immediately after he
24 took them. He issued Notice of Violation No 21205 while at the
25 company's office.

26 Subsequently, on November 21, 1985, the agency issued Notice and
27

1 Order of Civil Penalty No. 6378, asserting a violation of Section
2 9.03(b) of PSAPCA Regulation I and of WAC 173-400-040(1), and
3 assessing a fine of \$400.

4 Seattle Iron and Metals filed its appeal of this notice and order
5 on December 5, 1985.

6 VII

7 Appellant's aluminum sweat furnace has been in operation for over
8 ten years and is relatively old by industry standards. Normally it
9 functions without opacity violations and no further difficulties with
10 excessive smoke have been experienced since October 29, 1985.

11 However, company's prior record of compliance is one of numerous
12 opacity violations over the past fifteen years. Three of these have
13 involved the aluminum sweat furnace, the most recent previous citation
14 having been issued for events on December 28, 1983.

15 VIII

16 Any Conclusion of Law which is deemed a Finding of Fact is hereby
17 adopted as such.

18 From these Findings, the Board comes to these

19 CONCLUSIONS OF LAW

20 I

21 The Board has jurisdiction over the issues and the parties.

22 II

23 PSAPCA Regulation I, Section 9.03(b) prohibits opacity exceeding
24 20% for more than three minutes in any one hour. WAC 173-400-040(1)
25 is to the same effect.

26 FINAL FINDINGS OF FACT,
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1 We conclude that these standards were exceeded by emissions from
2 appellant's aluminum sweat furnace stack on October 29, 1985.

3 III

4 Appellant's defense rests primarily on the assertion that the
5 incident arose from an equipment malfunction beyond its control. The
6 company also contends that for the operator to have taken the time to
7 call the air pollution control agency would have made matters worse,
8 because he needed to concentrate fully on correcting the problem.

9 These arguments are based on a misperception of the Washington
10 Clean Air Act and its implementing regulations. The statute and
11 agency rules present a strict liability regime. Exceeding the
12 regulatory standards is a violation regardless of the reasons for the
13 occurrence. Commercial and industrial operations are required to
14 comply at all times.

15 Accordingly, although Section 9.17 of Regulation I calls for an
16 immediate report of a breakdown or upset, such reporting does not
17 operate to excuse any violation which may attend the problem.
18 Further, that a breakdown or upset was unforeseen and did not arise
19 through intentional or negligent conduct is here irrelevant to the
20 question of legal responsibility for a resulting violation.

21 IV

22 We conclude, therefore, that the assessment of a penalty for
23 violation of Section 9.03(b) and WAC 173-400-040(1) against Seattle
24 Iron and Metals was proper. Moreover, we decide that, in light of all
25 the circumstances, the amount of the penalty was reasonable and should

26 FINAL FINDINGS OF FACT,
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1 be upheld.

2 V

3 Any Finding of Fact which is deemed a Conclusion of Law is hereby
4 adopted as such.


5 From these Conclusions, the Board enters this

6 ORDER

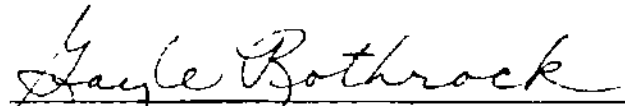
7 The Notice and Order of Civil Penalty (No. 6378) is affirmed.

8 DONE this 31st day of March, 1986.

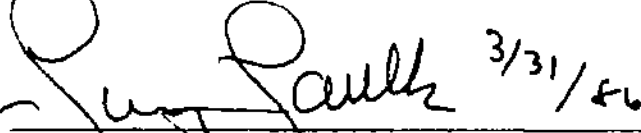
9 POLLUTION CONTROL HEARINGS BOARD

10 

11 WICK DUFFORD, Lawyer Member

12 

13 GAYLE BOTHEROCK, Vice-Chairman

14  3/31/86

15 LAWRENCE J. FAULK, Chairman